

1.)  
**RECEIVED**

Case 1:23-cv-00709-CDB Document 1 Filed 05/08/23 Page 1 of 15

MAY 08 2023

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BY THAVIS S. SULTON DEPUTY CLERK

**FILED**

MAY 08 2023

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY [Signature] DEPUTY CLERK

v.

Petition For Writ of Habeas Corpus  
§ 2241

B.M. Trate (Warden U.S.P. Atwater)

1:23-CV-00709-CDB-(HC)

Now comes the Petitioner, by way of pro se, petition, moving for this Court to set aside the detention order of the district court, pending judicial review, based upon the following:

Pursuant to the Administrative Procedure Act (APA) 5 U.S.C. § 702 the petitioner is suffering legal wrong, due to the agency action of the Federal Bureau of Prisons (BOP), denying me the First Step Act (FSA) time credit, arbitrarily and capriciously. As prior to my release on my charge for which I am currently on probation for, and serving a violation, the BOP was suppose to apply the FSA time credits that I had already earned. They alleged that they would take the credit from my supervision time. However, this never happened, and I am now back on probation violation.

Now the Administration at my current housing Unit team, at United States Penitentiary Atwater, has decided that now that my recidivism score is so high they no longer have to provide what I have already earned. When if they had taken the approx. 270 days of good time credit from my supervision, I would not be serving a probation violation now. Moreover, if they had deducted this time from the current sentence, I would have been released already, to the halfway house.

ANALYSIS

Pursuant to 5 U.S.C. § 701(b)(2), the definition of agency action can be found

in 5 U.S.C. § 551, and under this definition agency action includes "relief." 5 U.S.C. § 551(13), also see 5 U.S.C. § 551(11)(B) ("relief - includes the whole or a part of an agency recognition of a claim, right, immunity, privilege, exemption, or exception"). Under section 703 of this title is a independent grant of subject matter jurisdiction. See Appendix at pg. 1. Pursuant to APA § 706(1) "To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall - Compel agency action unlawfully withheld or unreasonably delayed." Thus, we examine the relief unlawfully withheld, based upon the following:

When an agency finds that justice so requires, it may postpone the effective of action taken by it, pending judicial review. 5 U.S.C. § 705. The APA only requires that a person be "adversely affected" by agency action with the meaning of relevant statute, to be "entitled to judicial review thereof." Accordingly, the decision to withhold the Good Time Credits (GTC) of the FSA is the conduct described in relevant part. As the BOP has decided to make me earn what I have already earned, but was adversely affected by their decision to withhold my GTC, because I was pending release, when they now allege that they will continue to withhold it until I earn it again; making this a deprivation of liberty without due process.

## DISCUSSION

If the Court would examine my inmate request (i.e. lay out) form, the Court will see my attempt to informally resolve my complaint. See Appendix, page 2. However, you can see in their response where they say I have the credits, but they can't be supplied because of my "recidivism score of High." See Appendix, pg. 3-Lower. Further, if you look at the

18 U.S.C. § 3621(c)(2)(B) where it states "The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve." See 18 U.S.C. § 3622(a)(6); also see *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("it is always in the public interest to prevent the violation of a party's constitutional rights.") In the *Black's Law Dictionary*, it defines Substantive Due process is: "The doctrine that the Due Process Clauses of the 5th and 14th Amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective." 11th Ed. (2019). *Bell v. Walsh*, 441 U.S. 539, 99 S. Ct. 1861, 60 L. Ed. 2d 447.

## Relief Sought

The Court should issue the writ, and order the petitioner be released from prison and probation with a finding of time served, for the declaring the withholding of Good Time Credit by GOP to be not only unconstitutional, but unlawful, when rightfully earned.

## Closing Argument

Where jurisdiction of a court is invoked on grounds which, if true, spell out existence of Federal jurisdiction, cause must be entertained for purpose of determining merits either by way of motion or, by trial. *Dry Creek Lodge, Inc. v. United States*, 515 F.2d 926, 20 Fed. Cl. Serv. 2d (Callaghan) 940 (10th Cir. 1975), cert. denied, *Shoshone Tribes v. Dry Creek Lodge, Inc.*, 449 U.S. 1118, 101 S. Ct. 931, 66 L. Ed. 2d 847 (1981).

4.)

## Certificate of Service

I, hereby swear under penalty of perjury that on this 25<sup>th</sup> day of April 2023, that this motion was entered into the institutional mailing system, and the information herein is true.

Travis Sulton #27705-171  
USP Atwater  
PO Box 019001  
Atwater, CA 95301

### 3. Section 703 as independent grant of subject matter jurisdiction

Predecessor to 5 USCS § 703 does not itself establish jurisdiction of federal courts over action not otherwise cognizable by them. *Kansas City Power & Light Co. v. McKay*, 225 F.2d 924, 96 U.S. App. D.C. 273, 8 Pub. Util. Rep. 3d (PUR) 414 (D.C. Cir.), cert. denied, 350 U.S. 884, 76 S. Ct. 137, 100 L. Ed. 780 (1955).

Predecessor to 5 USCS § 703 does not render competent court which lacks jurisdiction on any other ground. *Pan American World Airways, Inc. v. Civil Aeronautics Board*, 392 F.2d 483, 129 U.S. App. D.C. 159, 10 Av. Cas. (CGH) ¶ 17673 (D.C. Cir. 1968).

Judicial review of Secretary of Labor's attorney's fees award under Federal Employees' Compensation Act (FECA) was precluded under § 703, where FECA in unmistakable terms evinced congressional intent to foreclose judicial review of Secretary's award of attorney's fees and where legislative history of FECA evincing intent to increase benefits to federal employees while saving government expense of defending claims under various other acts indicated that appellants' attempt to bring administrative matter into federal court directly contradicted legislative purpose behind FECA, since nothing in § 703 confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids relief which is sought. *Hamby v. Janer*, 808 F.2d 1433 (11th Cir. 1987).

Unless Congress specifically maps judicial review path for agency, review may be had in federal District Court under its general federal question jurisdiction, 28 USCS § 1331. *Owner-Operators Independent Drivers Ass'n v. Skinner*, 931 F.2d 582, 91 Cal. Daily Op. Service 2976, 91 D.A.R. 4793 (9th Cir. 1991).

Appellate jurisdiction was lacking as to alleged federal action in not removing dismissed misdemeanor citation from database on truck drivers' safety records after state agency refused to remove it; such federal action was not rule, regulation, or order, and thus transfer of case to district court was appropriate. *Weaver v. Fed. Motor Carrier Safety Admin.*, 744 F.3d 142, 408 U.S. App. D.C. 361 (D.C. Cir. 2014).

5 USCS § 703 is jurisdictional statute where jurisdiction is otherwise unattainable. *Etheridge v. Schlesinger*, 362 F. Supp. 198 (E.D. Va. 1973).

Failure to seek judicial review under Administrative Procedure Act of reparations award made by Secretary of Agriculture under 7 USCS § 210 does not bar court from granting relief more extensive than that given by Secretary since Administrative Procedure Act is not independent jurisdictional provision. *Rowse v. Platte Valley Livestock, Inc.*, 604 F. Supp. 1463 (D. Neb. 1985).

Requester of records under Privacy Act could not establish jurisdiction over claims under Administrative Procedure Act (APA) because relief authorized under APA was not award for money damages; federal district courts were proper fora for APA actions. *Braun v. United States*, 144 Fed. Cl. 560, 2019 U.S. Claims LEXIS 1092 (Fed. Cl. Aug. 30, 2019).

### 4.—Amount in controversy

Administrative Procedure Act authorizes District Courts to entertain suits challenging validity of agency action without regard to amount in controversy, or other requirements contained in alternate jurisdictional statutes. *Associated Dry Goods Corp. v. EEOC*, 419 F. Supp. 814, 12 Fair Empl. Prac. Cas.

USCS

1

(BNA) 1729 (E.D. Va. 1976).

**5.Necessity of agency action**

In action for declaratory judgment and incidental relief under predecessor to 5 USCS § 703, federal court does not have jurisdiction to review alleged wrong due to publication of Public Service Responsibility of Broadcast Licensee by Federal Communications Commission since such publication does not constitute "agency action" within meaning of Administrative Procedure Act. *Hearst Radio, Inc. v. Federal Communications Com.*, 167 F.2d 225, 83 U.S. App. D.C. 63 (D.C. Cir. 1948).



United States Penitentiary  
Atwater, CaliforniaADMINISTRATIVE REMEDY PROCEDURE FOR INMATES  
INFORMAL RESOLUTION FORM

**NOTE TO INMATE:** You are advised that prior to receiving and filing a Request for Administrative Remedy Form BP-9 [BP-229 (13)], you MUST attempt to informally resolve your complaint through your Correctional Counselor. Briefly state ONE complaint below and list what efforts you have made to resolve your complaint informally and state the names of staff contacted. The ORIGINAL BP-8 must be attached should you choose to file a BP-9.

Issued By: JP (Initials of Correctional Counselor)  
Date Issued to the Inmate: 1-18-23

INMATE'S COMMENTS:

1. Complaint: I writing on the matter that I haven't receive my (FSA) time credit from me programming / working / schooling from December 24, 2018 - Jan 15, 2020 and after I was at Fairton FCI RDP Program And I was working Program, and taking my G.E.D at the same time the law states in the (FSA) Reform Bill Every one at these date and time must receive 10 to 15 Days credit (Retro Active)  
2. Efforts you have made to informally resolve: I already wrote BP's and BP's at Canaan USP still not resolve for Responders Back yet. also Case manager Fisher in Unit B1

3. Names of staff you contacted: All Unit team and CMC Bon Shock At USP Canaan Case Manager Fisher

Date Returned to Correctional Counselor: \_\_\_\_\_

Dravis Sultan  
Inmate's Signature

27105-171  
Reg. Number

1-19-23  
Date

CORRECTIONAL COUNSELOR'S COMMENTS:

Efforts made to informally resolve and staff contacted: you Score at a high Risk of Recidivism and there fore ETC does not apply

Date BP-9 Issued: 1-31-23

[Signature]  
Correctional Counselor

[Signature] 1/30/2023  
Unit Manager (Date)

# "Cap-Out Request Form"

(CANNAN USP)

10/5/22

To: Unit B1 unit Manager

"Kurilla"

(B1 cell 20)

From: Travis Sulton #21705171

I'm writing you on the matter that I  
Havent recieve my FSA Time credit  
From me programing, working and  
schooling from December 24, 2018 -  
Jan 15, 2020 I was at Fairton FeI  
at R-Dap Program and I was working  
the Compound job there and also  
schooling for my GED at the same time  
The law states in the First step act  
Reform everyone at these Dates and  
Time must recieve 10 to 15 Days  
credit (Retroactive) to there sentence  
And I haven't recieve mines yet  
Please Help me resolve this matter

\* ALSO I NEED BP-8 \*

BP-8



ATWKO 531.01 \*  
PAGE 001 OF 001 \*

INMATE HISTORY  
DRUG PGMS

\* 04-10-2023  
\* 14:17:29

REG NO.: 27705-171 NAME: SULTON, TRAVIS SANTALE  
CATEGORY: DRG FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT DESCRIPTION	START DATE/TIME	STOP DATE/TIME
ATW	ED WAIT HX DRUG EDUCATION WAIT-RQ HIST	09-21-2022 1419	CURRENT
CRL	TRANS DECL DRUG TRANS SERVICES DECLINE	08-26-2020 1204	12-23-2020 0559
CRL	MH CMTX NR MENTAL HEALTH TX NOT REFERRED	09-02-2020 1002	12-23-2020 0559
CRL	INELIGIBLE 18 USC 3621 RELEASE INELIGIBLE	09-21-2018 0905	12-23-2020 0559
CRL	FOL PART FOLLOWUP SERVICES PARTICIPANT	01-07-2020 1453	12-23-2020 0559
CRL	ED COMP DRUG EDUCATION COMPLETE	10-18-2016 1605	12-23-2020 0559
CRL	DAP FAIL O RESIDENT DRUG TRMT FAIL-OUTCOM	08-26-2020 1204	12-23-2020 0559
CRL	DAP COMP RES DRUG TRMT COMP/TRANS REQD	01-07-2020 1314	08-26-2020 1204
CRL	TRAN PAR V COMMUNITY TRAN SERV PARTIC VOE	08-25-2020 0942	08-26-2020 1204
FAI	DAP PART RESIDENT DRUG TRMT PARTICIPANT	03-12-2020 1425	03-31-2020 1314
FAI	DAP COMP RES DRUG TRMT COMP/TRANS REQD	01-07-2020 1453	03-12-2020 1425
FAI	DAP PART RESIDENT DRUG TRMT PARTICIPANT	11-27-2018 1700	01-07-2020 1453
FAI	DAP WAIT RESIDENT DRUG TRMT WAITING	08-14-2018 1142	12-20-2018 1145
FAI	DAP QUAL RESIDENT DRUG TRMT QUALIFIED	08-02-2018 1544	11-27-2018 1700

You are Eligible to  
Earn the credits,  
However, You are a  
risk of recidivism score  
of "High". Based on  
this, you cannot apply  
these credits at this  
time. 10/12/22 *PK*

Issued  
3/10/23

REJECTION NOTICE - ADMINISTRATIVE REMEDY

DATE: MARCH 7, 2023

FROM: ~~FOR~~ ADMINISTRATIVE REMEDY COORDINATOR  
ATWATER USP

TO : TRAVIS SANTALE SULTON, 27705-171  
ATWATER USP UNT: 5A QTR: E54-223U  
P.O. BOX 019001  
ATWATER, CA 95301

FOR THE REASONS LISTED BELOW, THIS ADMINISTRATIVE REMEDY REQUEST IS BEING REJECTED AND RETURNED TO YOU. YOU SHOULD INCLUDE A COPY OF THIS NOTICE WITH ANY FUTURE CORRESPONDENCE REGARDING THE REJECTION.

REMEDY ID : 1151622-F2 ADMINISTRATIVE REMEDY REQUEST  
DATE RECEIVED : MARCH 1, 2023  
SUBJECT 1 : OTHER SENTENCE COMPUTATION  
SUBJECT 2 :  
INCIDENT RPT NO:

REJECT REASON 1: YOU DID NOT PROVIDE A COPY OF YOUR INSTITUTION ADMINISTRATIVE REMEDY REQUEST (BP-9) FORM OR A COPY OF THE (BP-09) RESPONSE FROM THE WARDEN.

REJECT REASON 2: SEE REMARKS.

REJECT REASON 3: YOU MAY RESUBMIT YOUR REQUEST IN PROPER FORM WITHIN 5 DAYS OF THE DATE OF THIS REJECTION NOTICE.

REMARKS : PLEASE RE-SUBMIT ALL ORIGINAL DOCUMENTS WITH THE NEW BP-9, TO INCLUDE ALL PREVIOUSLY SUBMITTED BP-9S WITH CORRESPONDING REJECTION RECEIPTS.

REQUEST FOR ADMINISTRATIVE REMEDY

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

LAST NAME, FIRST, MIDDLE INITIAL: Sulton Travis S  
REG. NO.: 27705171  
UNIT: 5A  
INSTITUTION: ATwater

Part A- INMATE REQUEST

I'm writing on the matter that I haven't receive my (FSA) time credit from me Programming/working/schooling from December 24, 2018 - Jan 15, 2020 and After. I was At Fairton FCI RDap Program And I was working, Programming and taking my G.E.D at the same time it was suppose to be taken off my supervised Release Because I went Home Before the credit time days kick in still Haven't receive them yet!

DATE: 2/23/23

SIGNATURE OF REQUESTER: Travis S Sulton

Part B- RESPONSE

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

1151622-F2

CASE NUMBER: ~~1151622-F2~~

CASE NUMBER: \_\_\_\_\_

Part C- RECEIPT

Return to

LAST NAME, FIRST, MIDDLE INITIAL

REG. NO.

UNIT

INSTITUTION

SUBJECT

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)



**Requirement for submission of this request directly to the Regional Director, Bureau of Prisons.**

When the inmate believes that he may be adversely affected by submission of this request at the institution level because of the sensitive nature of complaint, he may address his complaint to the Regional Director. He must clearly indicate a valid reason for not initially bringing his complaint to the attention of the institution staff.

If the inmate does not provide a reason, or if the Regional Director or his designee believes that the reason supplied is not adequate, the inmate will be notified that the complaint has not been accepted. The form sent to the Regional Director will not be returned. However, the inmate may prepare a new request and submit it at the institution if he wishes.

REJECTION NOTICE - ADMINISTRATIVE REMEDY

DATE: FEBRUARY 15, 2023

FROM: *frd* ADMINISTRATIVE REMEDY COORDINATOR  
ATWATER USP

TO : TRAVIS SANTALE SULTON, 27705-171  
ATWATER USP UNT: 5A QTR: E54-230U  
P.O. BOX 019001  
ATWATER, CA 95301

FOR THE REASONS LISTED BELOW, THIS ADMINISTRATIVE REMEDY REQUEST IS BEING REJECTED AND RETURNED TO YOU. YOU SHOULD INCLUDE A COPY OF THIS NOTICE WITH ANY FUTURE CORRESPONDENCE REGARDING THE REJECTION.

REMEDY ID : 1151622-F1 ADMINISTRATIVE REMEDY REQUEST  
DATE RECEIVED : FEBRUARY 15, 2023  
SUBJECT 1 : OTHER SENTENCE COMPUTATION  
SUBJECT 2 :  
INCIDENT RPT. NO:

REJECT REASON 1: YOU DID NOT ATTEMPT INFORMAL RESOLUTION PRIOR TO SUBMISSION OF ADMINISTRATIVE REMEDY, OR YOU DID NOT PROVIDE THE NECESSARY EVIDENCE FOR YOUR ATTEMPT AT INFORMAL RESOLUTION.

REJECT REASON 2: YOU MAY RESUBMIT YOUR REQUEST IN PROPER FORM WITHIN 5 DAYS OF THE DATE OF THIS REJECTION NOTICE.

REJECT REASON 3: SEE REMARKS.

REMARKS: SUBMIT ORIGINAL DOCUMENTS WITH NEW FEE



UNITED STATES DISTRICT COURT  
District of South Carolina

UNITED STATES OF AMERICA

**Judgment in a Criminal Case**

(For Revocation of Probation or Supervised Release)

v.

TRAVIS SANTALE SULTON

a/k/a "Hip"

Case No: 3:14-736 (6)

USM No: 27705-171

Jenny Smith, AFPD

Defendant's Attorney

**THE DEFENDANT:**

- ☒ admitted guilt or did not contest to violation of conditions of the term of probation.  
☐ was found in violation of condition(s) after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
<u>1</u>	<u>New Criminal Conduct</u>	<u>May 5, 2022</u>
<u>2</u>	<u>New Criminal Conduct</u>	<u>May 5, 2022</u>
<u>3</u>	<u>New Criminal Conduct</u>	<u>May 5, 2022</u>
<u>4</u>	<u>New Criminal Conduct</u>	<u>May 5, 2022</u>
<u>5</u>	<u>New Criminal Conduct</u>	<u>May 5, 2022</u>
<u>6</u>	<u>New Criminal Conduct</u>	<u>April 28, 2022</u>
<u>7</u>	<u>Use/Possession of Illegal Drugs</u>	<u>December 28, 2020</u>
<u>8</u>	<u>Use/Possession of Illegal Drugs</u>	<u>March 2, 2022</u>
<u>9</u>	<u>New Criminal Conduct</u>	<u>December 28, 2020</u>
<u>10</u>	<u>New Criminal Conduct</u>	<u>June 3, 2021</u>

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.:  
1625

Defendant's Year of Birth:  
1983

City and State of Defendant's Residence:  
Columbia, South Carolina

June 29, 2022  
Date of Imposition of Judgment

s/Terry L. Wooten  
Signature of Judge

Terry L. Wooten, Senior United States District Judge  
Name and Title of Judge

7/5/2022

Date

[A] court may grant a preliminary injunction if a plaintiff shows (1) a strong{2007 U.S. Dist. LEXIS 2} likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases). Alternatively, a court may grant a preliminary injunction if a plaintiff demonstrates either a combination of probable success on the merits and the possibility of irreparable harm or that serious questions are raised and the balance of hardships tips sharply in his favor. *Earth Island Institute v. United States Forest Svc.*, 442 F.3d 1147, 1158 (9th Cir. 2006) (internal citations and quotations omitted).

The Anti-Injunction Act provides,

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